

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF PARTICIPANT

Purchase by the Board of Mortgage Loans is conditioned upon the compliance by the Participant with all requirements herein set forth and upon the following undertakings, representations and the existence of the following state of facts with respect to each Mortgage Loan on the Mortgage Purchase Date applicable to it; and the Participant represents and warrants that such state of facts will exist on the Mortgage Purchase Date with respect to each Mortgage Loan and that said representations and warranties survive the purchase of such Mortgage Loans:

(a) The unpaid principal balance of each Mortgage Loan is accurately stated in the assignment for such Mortgage Loan.

(b) The amount of the unpaid principal balance and accrued interest, if any, is justly due and owing.

(c) No counterclaim, offset, defense or right of rescission exists which can be asserted and maintained by the Mortgagor or his successor in interest against the Board, as assignee of said Mortgage Loan.

(d) Each Mortgage Loan is evidenced by a properly executed promissory note made payable or assigned to the order of the Participant and endorsed by the Participant as follows:

“Payable to the order of the Montana Board of Housing without recourse.”

and by a Mortgage which is the legal, valid and binding obligation of the makers thereof and is enforceable in accordance with its terms, except only as such enforcement may be limited by laws affecting the enforcement of creditors’ rights generally.

(e) Each Mortgage, financing statement, if any, and any other document required to be filed in a public office to perfect the Mortgage lien against third parties has been duly and timely filed, registered or recorded by the Participant in the proper public office in order to give constructive notice thereof to all subsequent purchasers or encumbrances.

(f) In acting pursuant to this Guide, the Participant has not discriminated or permitted discrimination against any person or group of persons in any manner prohibited by the laws of the United States or the State.

(g) The Participant is authorized to do business in the State, is a FHA-, PMI-, RD- and/or VA-approved mortgagee and is in compliance with all other applicable State and federal laws governing the business of the Participant and the making of loans for residential housing.

(h) The Participant, being the sole owner and holder of the Mortgage Loan, has full right to sell and assign the Mortgage Loan to the Board, and such assignment

conveys a good and marketable mortgagee's title to the Board free and clear of all liens and encumbrances and subject only to real property taxes and assessments not yet due and encumbrances customarily accepted in accordance with applicable title standards and disclosed to the Board prior to the Mortgage Purchase Date.

(i) The Mortgage Loan is not subject to any existing assignment or pledge other than the assignment to the Board provided for herein, and title to the Mortgage Loan shall pass to the Board at the time of purchase by the Board.

(j) The Mortgage creates a valid and subsisting first lien on the real property held by the Mortgagor in fee simple and improvements therein described (and fixtures) to secure the Mortgage Loan, the term "first lien" meaning such classes of first liens as are commonly given to secure loans on real estate under the laws of the State.

(k) The Participant has not modified in any respect and has not satisfied, canceled, subordinated or compromised in whole or in part the Mortgage Loan indebtedness and has not released the mortgaged property in whole or in part from the lien of the indebtedness evidenced by the note and secured by the Mortgage.

(l) In the event the Mortgage Loan was made to finance the purchase of a newly constructed Residence, said Residence was constructed in accordance with all building codes and standards applicable under FHA, PMI, RD and VA programs, including any warranties on materials, workmanship and mechanicals.

(m) There is no default or delinquency under the terms and covenants of the Mortgage Loan; no payments are delinquent as of the date of delivery to the Board; all costs, fees and expenses incurred in making, closing and recording the Mortgage Loan have been paid; and within the three-month period preceding the submission of the Mortgage Loan by the Participant for purchase by the Board there has not been outstanding any advance of funds by the Participant or any prior holder of the Mortgage Loan, or by another at the request of the Participant or any prior holder of the Mortgage Loan, to or on behalf of the Mortgagor to be used by the Mortgagor for the payment of any monthly installment, principal, interest, or other charges payable under the Mortgage Loan.

(n) There is pending no proceeding for a total or partial condemnation of the mortgaged property, and said property is undamaged by fire, wind, storm or other casualty.

(o) The improvements on the property securing the Mortgage Loan have been fully completed and the mortgaged property is free and clear of all mechanics' and materialmen's liens, or liens in the nature thereof which could materially adversely affect the value of the mortgaged property, and no rights are outstanding that could give rise to such liens and the mortgaged property is free from all other liens, encumbrances, restrictions and covenants which would materially adversely affect the value of the mortgaged property.

(p) The improvements upon which the appraised value was based (and upon which the Mortgage Loan, in turn, was based) lie wholly within the boundaries and building restrictions of the mortgaged property, and no improvements on adjoining properties encroach upon the mortgaged property unless such encroachments have been waived by the FHA, PMI, RD or VA; there are no exceptions in the title insurance policy, if any, for matters of survey, except for normal easements and restrictions which do not materially adversely affect the value of the mortgaged property.

(q) The Participant has no knowledge of any circumstances or conditions with respect to the Mortgage Loan and Mortgage, or the mortgaged property, or the Mortgagor or his credit standing that can be reasonably expected to cause prudent private investors in the secondary market to regard the Mortgage Loan as an unacceptable investment, cause the Mortgage Loan to become delinquent or adversely affect the value or marketability of the Mortgage Loan and the Participant has no knowledge of any material misstatements by the Mortgagors in any of the material provided in Exhibit A.

(r) The Mortgage Loan meets all applicable State and federal laws, regulations and other requirements pertaining to usury.

(s) The relevant requirements of any State or federal laws, rules or regulations respecting, known as or governing consumer credit and truth in lending have been complied with and no right of rescission of the Mortgage Loan transaction exists.

(t) The Participant has no knowledge that any improvement covered by the Mortgage Loan is in violation of any applicable zoning law or regulation.

(u) In connection with the placement of the title or hazard insurance pertaining to the Mortgage Loan or the property securing the Mortgage Loan, to the best of the Participant's knowledge and belief, no unlawful fee, commission, kickback or other unlawful compensation or value, of any kind, has been or will be received by any attorney, firm or other person or entity, and no such unlawful items have been received, retained or realized by the Participant.

(v) All closing and settlement costs and all other charges in connection with the Mortgage Loan, paid or borne by the Mortgagor and by the seller of the property securing the Mortgage Loan, have been disclosed to such parties and have been clearly itemized, identified and explained in detail (with the party paying or bearing such items of cost or other charge clearly indicated) on a closing or settlement statement, a signed copy of which was furnished on or before closing or settlement to such Mortgagor and seller; and the Participant has complied with all requirements of the Real Estate Settlement Procedures Act of 1974 (Public Law 93-533), as amended by the Real Estate Settlement Procedures Act Amendments of 1975 (Public Law 94-2005) and the regulations issued pursuant thereto applicable at the time the Mortgage Loan was originated.

(w) The Participant has no knowledge that either the mortgaged property or appurtenances thereto, or the subjection thereof to the use and enjoyment for the purposes

intended, is, or will be, violative of any applicable law, rule or regulation in effect on the Mortgage Purchase Date relating to or governing the protection of the environment, and the Participant has no knowledge of any pending case or proceeding directly involving such property in which compliance with any such law, rule or regulation is an issue or that anything further remains to be done to satisfy in full all requirements of each such law, rule or regulation constituting a prerequisite to such use and enjoyment of said property.

(x) The improvements upon the real property subject to each Mortgage Loan are covered by a valid and existing policy of insurance meeting the requirements of Section 4.06 hereof.

(y) The Mortgage Loan is covered by a paid-up Mortgagee Title Insurance Policy written on the 1970 Standard form of the American Land Title Association, (including endorsements 100, 116, 8.1, and if Manufactured Housing, endorsement 7) issued by a title insurer acceptable to the Board in an amount at least equal to the outstanding principal balance of the Mortgage Loan by the Board hereunder, naming the Board as an insured party, such title insurance policy not being subject to any exceptions other than those previously approved by the FHA, PMI, RD or VA and waived in writing by the Board.

(z) The Participant has, and its officers acting on its behalf have, full legal authority to enter into the transactions contemplated by this Guide; and the consummation of the transactions herein contemplated, whether presently or in the future, and compliance with the terms, conditions and provisions hereof will not conflict with or result in a breach of any of the terms, conditions or provisions of the charter or the bylaws of the Participant or any agreement or instrument to which the Participant is now a party or by which it is bound, or constitute a default thereunder; the Participant is not a party to or bound by any agreement or instrument or subject to any judgment, order, writ, injunction, decree, law, rule or regulation which now or in the future may materially and adversely affect the ability of the Participant to perform the obligations of the Participant enforceable against it in accordance with the terms of this Guide subject to any applicable bankruptcy, insolvency, reorganization or similar laws affecting the enforcement of creditors' rights generally.

(aa) At the date hereof and as of the Mortgage Purchase Date, the Participant shall be duly organized, validly existing and in good standing under the laws of the jurisdiction governing such matters and shall have power and authority to own its properties and carry on its business as now being conducted, and shall be duly qualified to do such business wherever such qualification is required.

(bb) To the knowledge of the Participant, there is no material misstatement or omission in the documents provided by the Mortgagor in connection with the Mortgage Loan.

(cc) The Participant has diligently performed the inquiries and investigations required by Section 2.05 hereof and, based upon such inquiries and investigations and

such other facts and circumstances which the Participant may be aware of, the Participant has no reason to believe that the Residence requirement, the three-year requirement, the purchase price requirement, the income requirements, and the new Mortgage requirement, as set forth in Section 2.05 hereof have not been complied with.

(dd) Based upon information obtained in the course of originating the Mortgage Loan and otherwise, and such reasonable inquiries as the Participant considers necessary and appropriate, the fees, charges and other amounts borne by the Mortgagor which are attributable to the Mortgage Loan do not exceed the limitations set forth in Section 2.04(b) hereof.

(ee) The Participant has complied as to each FHA Insured Mortgage Loan, with the National Housing Act, as amended and supplemented, all rules and regulations issued thereunder and all administrative publications, and such insurance is in full force and effect and will, upon purchase of the Mortgage Loans, inure to the benefit of the Board.

(ff) The Participant has complied as to each Mortgage Loan guaranteed by RD, under Title V of the Housing Act of 1949, as amended and supplemented, all rules and regulations issued thereunder and all administrative publications, and such guaranty is in full force and effect and will, upon purchase of the Mortgage Loans, inure to the benefit of the Board.

(gg) The Participant has complied as to any Mortgage Loan which is subject to a VA guarantee, that the guarantee is the maximum allowed by law at the time of Mortgage Loan origination and that no deductions have been made to that maximum resulting from previous use of entitlement by the veteran.

(hh) The Participant has complied as to each Mortgage Loan guaranteed by the VA, under the Servicemen's Readjustment Act, as amended and supplemented, all rules and regulations issued thereunder and all administrative publications, and such guaranty is in full force and effect and will, upon purchase of the Mortgage Loans, inure to the benefit of the Board.

(ii) The Participant has complied as to each Mortgage Loan guaranteed/insured by PMI with all rules thereof, and such guaranty/insurance is in full force and effect and will, upon purchase of each Mortgage Loan, inure to the benefit of the Board.